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Paper No. 3

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**OFFICE OF PETITIONS
A/C PATENTS**

In re Application of
Harold A. Dvorachek
Application No. 09/727,166
Filed: November 30, 2000
Attorney Docket No. 1709898

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DECISION DISMISSING
PETITION

This is a decision on the petitions under 37 CFR 1.10(d) filed January 24, 2001, requesting that the above-identified application be accorded a filing date of November 28, 2000, rather than the presently accorded filing date of December 1, 2000.

Petitioner requests the earlier filing date on the basis that the application was purportedly deposited in Express Mail service on November 28, 2000, pursuant to the requirements of 37 CFR 1.10, but that the "date-in" on petitioner's "Express Mail" mailing label was omitted as a result of an error by the United States Postal Service (USPS).

Paragraph (a) of 37 CFR 1.10 states that:

Any correspondence received by the Patent and Trademark Office (Office) that was delivered by the "Express Mail Post Office to Addressee" service of the United States Postal Service (USPS) will be considered filed in the Office on the date of deposit with the USPS. The date of deposit with the USPS is shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation. If the USPS deposit date cannot be determined, the correspondence will be accorded the Office receipt date as the filing date. See §1.6(a). (Emphasis Supplied).

Paragraph (d) of 37 CFR 1.10 states that:

Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or

other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

- (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;
- (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and
- (3) The petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

A grantable petition under 37 CFR 1.10(d) must include "a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day." In addition, the showing "must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the 'Express Mail Post Office to Addressee' service of the USPS." Evidence from the USPS may be the Express Mail Corporate Account Mailing Statement or a copy of the USPS Track/Confirm system information. Evidence that came into being within one day after the deposit of the correspondence as Express Mail may be in the form of a log book which contains information such as place, date and time of deposit; the time of the last scheduled pick-up for that date; and the date and time of entry in the log.

The petition filed January 24, 2001 is accompanied by a copy of the USPS Track/Confirm system information showing the Express Mail package in question was accepted in Chicago on November 30, 2000, not November 28, 2000.

The petition is also accompanied by a copy of counsel's handwritten time sheet and a copy of a printout of counsel's "Patent Docket Case Information Sheet," neither of which is an Express Mail log. In fact, there is no entry in either the time

sheet or the docket sheet even suggesting that the application was mailed by Express Mail much less an entry identifying the Express Mail number, the place, date and time of deposit and the name of the individual who deposited the application in Express Mail service. Further, the rule requires that the evidence submitted to corroborate the requested filing date be "evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the 'Express Mail Post Office to Addressee' service of the USPS." It is unclear when counsel's handwritten time sheet and "Patent Docket Case Information Sheet" were prepared.

Since the evidence from the USPS, namely, the USPS Track/Confirm system information, corroborates a "date-in" of November 30, 2000, the petition is granted to the extent that the filing date has been corrected to November 30, 2000. The petition is otherwise dismissed.

A copy of the corrected filing receipt is enclosed.

Any request for reconsideration of this decision should be filed within **TWO MONTHS** of the date of this decision in order to be considered timely (see 37 CFR 1.181(f)) and should be addressed as follows:

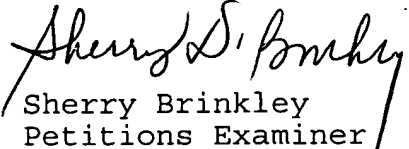
By mail: Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

By facsimile: (703) 308-6916
Attn: Office of Petitions

By hand: Office of Petitions
2201 South Clark Place
Crystal Plaza 4, Suite 3C23
Arlington, VA 22202

The application is being returned to art unit 3722 with a filing date of November 30, 2000, for examination in due course.

Telephone inquiries specific to this matter should be directed to Wan Laymon at (703) 306-5685.


Sherry Brinkley
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

Enclosure: